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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 930

IRA LEE BURCH,

Petitioner,

vs.

THE HIBERNIA BANK, RICHFIELD OIL CORPORATION, HANCOCK OIL COMPANY, JOSEPH H. RUSSELL, HENRIETTA S. RUSSELL, JOSEPH H. RUSSELL, JR., Trustee, HARVEY A. RUSSELL and HUBBARD S. RUSSELL,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, State of California, Second Appellate District.

Brief in Opposition for Respondents Richfield Oil Corporation, Hancock Oil Company, Joseph H. Russell, Henrietta S. Russell, Joseph H. Russell, Jr., Trustee, Harvey A. Russell and Hubbard S. Russell.

Questions Presented.

The first two questions stated in the Petition (pp. 2-3) and relating to the effect of farmer-debtor proceedings instituted in 1934 under the bankruptcy laws of the United States were not, and were not required to be, considered or decided by the California court. The Dis-

trict Court of Appeal found it unnecessary to examine these questions by reason of its conclusion that a judgment entered in 1940 in a quiet title suit to which petitioner was a party was *res judicata* as to any claim petitioner might have had to the oil leasehold in question (App. B to Pet. p. 16). The quiet title judgment was rendered by a California court and its effect is peculiarly a question of state and not of federal law. The real question presented, therefore, is whether the non-federal ground of decision, *i.e., res judicata,* is so plainly untenable or so insubstantial as to be in effect an evasion of the federal issues sought to be raised by petitioner.

Statutes Involved.

Section 75(c) of the bankruptcy laws as added March 3, 1933, C. 204, 47 Stats. 1470, 1471, is incompletely quoted in the Petition (p. 4). The omitted portion is italicized in the following quotation:

> *"At any time within five years after this section takes effect,* a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. . . ."

Said section has been amended from time to time, and now reads as follows in U. S. Code, Title 11, Section 203(c):

> *"At any time prior to March 1, 1949,* a petition may be filed by any farmer in the district court of the district in which he resides, stating that such farmer is insolvent or unable to meet his debts as they mature and that it is desirable to effect a composition or an extension of time to pay his debts. . . ." (Emphasis supplied.)

Statement of the Case.

The opinion of the District Court of Appeal fully and fairly summarizes the facts of this case (App. B to Pet. pp. 1-10).

Reasons for Denying the Writ.

1. The Federal Question Claimed by Petitioner to Exist in This Case Is of No Public Importance.

Even if petitioner were correct in his claim that this case presents a federal question under the farmer-debtor provisions of the bankruptcy law, that question would be of no consequence to anyone but the parties to this action.

First, *the statute under which the purported claim is made expired by its own terms eight years ago.* (11 U. S. C., Sec. 203(c), quoted above.) See, *District of Columbia v. Sweeney,* 310 U. S. 631, wherein this Court denied certiorari "in view of the fact that the tax is laid under a statute which has been repealed and the question is therefore not of public importance."

Second, the purported federal claim arises from a coincidence of facts that is unique to this case, and the claim in any event is no more than colorable. Laid bare, it is that petitioner, an oil lessee, acquired some rights beyond those granted by his lease and by the subordination agreement with Hibernia, by reason of the fortuitous circumstance that his lessor was a farmer who filed under the farmer-debtor provisions of the bankruptcy law. Neither the proceedings nor the Act under which they were had were intended to give any rights, to say nothing of a windfall, to a person such as petitioner, who was neither a farmer-debtor nor a creditor of a farmer nor a party to the bankruptcy proceedings. No principle of public importance is involved.

2. The Case Was Properly Decided Below on the Basis of Res Judicata, an Adequate Non-federal Ground.

As already noted, the California court did not purport to pass upon the legal effect of the farmer-debtor proceedings instituted by Edward Cebrian in 1934 under Section 75 of the bankruptcy laws of the United States. The District Court of Appeal instead held that it was unnecessary for it to examine into those proceedings or the validity of the foreclosure of Hibernia's mortgage by reason of its conclusion that any claim petitioner may have had to the oil leasehold on Cuyama Rancho was barred by *res judicata* (App. B to Pet. p. 16). The bar was based upon a judgment entered June 10, 1940, by the Superior Court of Santa Barbara County, California, quieting The Hibernia Bank's title to Cuyama Rancho against petitioner and others.

Since the District Court of Appeal did not deny petitioner's asserted federal right under the bankruptcy laws or even consider it, petitioner is reduced to contending that the state court deprived him of his claimed federal rights by means of its decision based on *res judicata* (Pet. pp. 15, 16, 18-19). In so contending, however, petitioner is met at the threshold with "the conclusively settled doctrine that the scope and effect of a state judgment is peculiarly a question of state law, and therefore a decision relating only to such subject involves no Federal question." (*Kenney v. Craven,* 215 U. S. 125, 130; see also *Northern Pacific Railroad Co. v. Ellis,* 144 U. S. 458, 464-465.) Moreover, it is well settled that asserted federal issues, equally with other issues, can be foreclosed

by *res judicata* arising from a state court judgment. (*Angel v. Bullington,* 330 U. S. 183; *Grubb v. Public Utilities Commission,* 281 U. S. 470.)

Where, in a case involving a claim of federal right, a state court's decision is based upon non-federal grounds broad enough to sustain it, this Court has stated that it will examine the non-federal grounds only to determine whether they are "plainly untenable" or "so colorable or unsubstantial as to be in effect an evasion of the constitutional issue." (*Ward v. Love County,* 253 U. S. 17, 22; *Memphis Gas Co. v. Beeler,* 315 U. S. 649, 654.) Even an erroneous decision on *res judicata* raises no substantial federal question, for as Justice Holmes said, "if the mistake [in the application of res judicata] is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights." (*Chicago Life Insurance Co. v. Cherry,* 244 U. S. 25, 30.)

The decision below on *res judicata* does not transgress the line drawn by Justice Holmes; indeed, it has a sound basis and is manifestly correct. It is in no way founded upon procedural technicalities found in the state law such as those which led this Court to hold in *Davis v. Wechsler,* 263 U. S. 22, 24, that local practice cannot put unreasonable obstacles in the way of an assertion of federal rights. On the contrary, as revealed by the opinion of the District Court of Appeal (App. B to Pet. pp. 10-16), it is based upon a sound application of established principles of California law relating to *res judicata;* it leaves no shred

of support for petitioner's contention that it was based upon "insubstantial grounds at variance with long-established equitable and legal principles." (Pet. p. 23.)

Petitioner is plainly wrong in his assertion (Pet. pp. 19-20) that the court in the quiet title action was without jurisdiction as against him because his oil leasehold rights under the subordination agreement had not expired when the quiet title action was commenced. At that time Hibernia did have a cause of action against petitioner to quiet its title to the property subject only to his remaining rights in the leasehold. For that reason the authorities cited by petitioner in support of his claim that the action was premature (*Minneapolis & St. L. R. Co. v. Peoria P. U. R. Co.*, 270 U. S. 580; *American Bonding & Trust Co. v. Gibson County* (6th Cir.), 145 Fed. 871; Pet. p. 20) have no application. In any event, those cases deal only with federal court practice and do not purport to announce any principle which would be binding with respect to state court practice.

The question whether the quiet title judgment could properly speak as of the date of its entry rather than as of the time of commencement of the action is peculiarly a question of California law, as is the related question as to whether the default judgment violated Section 580 of the California Code of Civil Procedure. (See *Kenney v. Craven*, 215 U. S. 125, 130.) In resolving these questions against petitioner, the District Court of Appeal properly took note of the fact that prior to the entry of the quiet title judgment but after the expiration of his leasehold, petitioner had filed in the quiet title action a

verified answer to the Donahue cross-complaint which constituted in effect a sworn disclaimer by petitioner of any interest in the property because he had not discovered oil on or before March 9, 1938. Instead of being in any way misled by the prayer of the complaint, petitioner affirmatively consented to the judgment that was entered against him (App. B to Pet. p. 11).*

Petitioner's claims of fraud in the obtaining of his default in the quiet title action (Pet. pp. 22-23) were fully considered by the District Court of Appeal (App. B to Pet. pp. 12-16). Clearly, the question of what constitutes fraud sufficient to support a collateral attack upon a judgment of a state court is a question of state and not of federal law.

There is, of course, no merit in petitioner's contention that there was no actual adjudication in the quiet title action of the issue as to the effect of the farmer-debtor proceedings (Pet. p. 23). That issue could have been presented there as a defense to Hibernia's claim, and therefore it cannot now be relitigated in another action between the same parties and involving the same subject matter. *Grubb v. Public Utilities Commission,* 281 U. S. 470, 479.

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*It is significant to note in this connection that the result here would not be changed even if the quiet title judgment had followed strictly the prayer of the complaint and had quieted Hibernia's title subject to petitioner's lease which the complaint alleged was to cease and terminate if he did not discover oil on or before March 9, 1938. It is affirmatively alleged by petitioner in his complaint in this action [R. p. 9; Pet. p. 9.] that he did not locate oil by March 9, 1938.

Conclusion.

For the reasons set forth above, as well as those stated in the Brief in Opposition filed herein on behalf of respondent The Hibernia Bank (which are adopted herein by reference), these respondents pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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